S.B.CRIMINAL LEAVE TO APPEAL NO.61/2006
(State of Raj. Vs. Nathmal)

Date of order :: 13.11.2006

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.S.N.Tiwari, PP for the State.
Mr.N.L.Joshi, for the respondent.

Heard learned Public Prosecutor and learned counsel appearing for the respondent.

Learned Public Prosecutor states that 8 biswa land whereupon the accused-respondent made illegal encroachment, is *Gair Mumkin Masan*. Even after service of notice, he did not handed over the possession. Therefore, FIR was lodged and challan was filed against the accused-respondent under Section 91(6) of the Rajasthan Land Revenue Act. Both the parties led their evidence and at the conclusion of trial, learned trial Judge has acquitted the accused-respondent. It is contended that prosecution by producing the revenue record has proved that the said land was in the nature of Ghair Mumkin Masan and the same cannot be got allotted. Learned trial court has wrongly acquitted the accused-appellant vide its

impugned judgment dated 17.10.2005.

In reply, learned counsel for the respondent states that accused is having possession on this land. He had purchased this property through his wife Smt.Jhankar Devi from Boduram. The Patta is Exhibit-D/1 and Exhibit-D/2 to D/5 are the documents of purchase. Learned trial court has specifically held that Patta Exhibit-D/1 produced on behalf of the accused appears to be same as Memo of *Naksha Mauka* Exhibit-P/3 and therefore, learned counsel states that accused is having lawful possession over the said land. The Panchayat had issued Patta in the year 1970. Therefore, it cannot be said that accused-respondent has made illegal encroachment on the land in dispute. Learned counsel for the respondent further states that it is a civil dispute and as such, respondent cannot be convicted. He prays that leave to appeal may be rejected.

I have considered the rival submissions advanced by learned counsel for the parties and also gone through the judgment dated 17.10.2005 passed by learned Judicial Magistrate No.2, First Class, Sujangarh, District-Churu. It appears from the record that accused-respondent was charged

under Section 91(6) of the Rajasthan Land Revenue Act. The prosecution has produced 4 witnesses and exhibited 14 documents. Accused-respondent also led evidence in support his case and exhibited some documents. It was stated in defence that respondent purchased the said land through his wife Smt.Jhankar Devi from Boduram. The Patta (Exhibit-D/1) issued by Gram Panchayat on 9.9.1970 was produced by the respondent. Learned trial court after haring both the parties, has acquitted the respondent holding intere alia that the neighbours which have been shown in Patta Exhibit-D/1 as well as *Naksha Mauka* Exhibit-P/3 are the same and therefore, it appears that respondent was in lawful possession over the disputed land. Looking to the entire facts and circumstances of the case, I do not find any error in the order of the trial court and in the circumstances, therefore, it is not a fit case to grant leave.

Accordingly, leave is refused. The application seeking leave to appeal filed under Sec. 378(iii) & (i) Cr.P.C. is hereby rejected.

(KRISHAN KUMAR ACHARYA), J.

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